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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1851

JAMES ALPHONZO DELLY,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF MARYLAND

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

The Petitioner, James Alphonzo Delly, prays that a Writ of Certiorari issue to review the judgment of the Court of Special Appeals of Maryland filed in this case on March 1, 1976.

OPINION BELOW

The opinion of the Court of Special Appeals of Maryland (Appendix A, A. 1) has not as yet received an official citation in the Maryland Appellate Reports. The unofficial citation is 352 A.2d 331. The Order of the Court of Appeals of Maryland (Appendix B, A. 4) denying the Petition for the Issuance of a Writ of Certiorari to the Court of Special Appeals of Maryland was filed on May 25, 1976.

JURISDICTION

The judgment of the Court of Special Appeals of Maryland was filed on March 1, 1976. The denial of the issuance of a Writ of Certiorari was ordered by the Court of Appeals of Maryland on May 25, 1976.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3).

QUESTIONS PRESENTED

1. Whether the evidence seized by officers of the Baltimore City Police Department was conducted pursuant to a search and seizure warrant which lacked the specificity required by the Fourth Amendment to the United States Constitution due to the multiple dwelling character of the premises searched.

2. Whether the evidence seized by the officers of the Baltimore City Police Department was the result of an unreasonable search and seizure due to the conduct of the police officers in executing the search and seizure warrant

once they had actual notice of the multiple dwelling character of the premises searched.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

1. Amendment Four to the United States Constitution reads as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

2. Article 27, Section 286 (a)(1) of the Annotated Code of Maryland is the relevant portion of the statute under which the petitioner was prosecuted, though nothing turns on its terms, and reads as follows:

> "(a) Except as authorized by this subheading, it shall be unlawful for any person:
>
> (1) To manufacture, distribute, dispense, or to possess a controlled dangerous substance in sufficient quantity to reasonably indicate under all the circumstances as intent to manufacture, distribute, or dispense, a controlled dangerous substance; . . ."

STATEMENT OF THE CASE

On August 31, 1974, police officers with the Baltimore City Police Department armed with a search and seizure warrant (A.), entered a dwelling located at 831 Whitelock Street in Baltimore City. As they entered the first floor of the dwelling, they found an elderly woman, the owner of the property, and an elderly man. The two elderly persons were held at gunpoint and bodily searched. The police also searched the first floor of the dwelling.

As the two elderly people were being held at gunpoint, the police broke down the locked doors of two rooms located on the second floor, found they were unoccupied and, finally, knocked down the door of a third room, that of the petitioner, where they found the petitioner in possession of sixty-five (65) bags of heroin and a large quantity of glassine bags. After locating the petitioner, the main object of the search, the police went to the third floor of the house and broke into two more rooms. Of the four rooms other than the petitioner's which were broken into and searched, three had been rented to other persons.

Although the house had the outward appearance of a single family dwelling, it was, in fact, registered as a multiple listing with the City of Baltimore, thereby allowing the owner to rent rooms. There was no evidence offered which tended to show that the police checked any real estate records regarding the dwelling or that they attempted to specifically locate where in the dwelling the petitioner lived either prior to or during the execution of the warrant.

At a pre-trial hearing on April 15 and 16, 1975, the petitioner made a motion to suppress and exclude all

evidence recovered during the search occurring on August 31, 1974. The petitioner's attack was based on a violation of his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution. Specifically, the petitioner claimed that the search and seizure warrant lacked specificity and was therefore an illegal general warrant. In addition, the petitioner argued that the conduct of the police in their execution of the warrant in question amounted to an unreasonable search and was thus likewise constitutionally invalid (A. 8). The Court ruled that the evidence seized on August 31, 1974 was admissible, thus denying the petitioner's motion (A. 21).

On April 21, 1975, based upon the evidence ruled admissible at the pre-trial hearing, the petitioner was convicted of possession of heroin with intent to distribute and was sentenced to seven (7) years imprisonment.

ARGUMENT IN SUPPORT OF APPLICATION FOR A WRIT OF CERTIORARI

The constitutional questions presented by the facts of this situation are ones which courts in many jurisdictions have had occasion to review and which they have resolved in many different ways. At no time, however, has this Court addressed itself to the precise issues raised herein. The Petitioner thus most respectfully asks this Court to settle the serious questions involved and give guidance to both the Courts and the police authorities of this nation on precisely how to conduct themselves when confronted with similar situations. The petitioner asks this Court to spare innocent persons the anquish imposed upon such individuals as the elderly couple involved in the instant case, by enunciating

constitutional standards which must be satisfied by law enforcement personnel both in their obtaining of search and seizure warrants and in their execution of them under the circumstances presently before this Court.

The Fourth Amendment to the United States Constitution requires, in pertinent part, that "... no warrants shall issue but upon probable cause, ... and particularly describing the place to be searched, ..." The requirement of particularity in the Fourth Amendment is a result of the extreme distaste during the colonial period of our nation for Writs of Assistance. It is clear that, as a result of the Fourth Amendment's mandates, general warrants are void and anything seized thereunder is to be returned to the owner thereof and not used in any prosecution against him. *Stanford v. Texas,* 379 U.S. 476 (1965).

This Court has had occasion to state in general terms when it can be said that the particularity requirement has been satisfied. In *Steele v. United States No. 1,* 267 U.S. 498 (1925), it was decided that the particularity requirement was met since the building named in the warrant was not divided into separate units although two street numbers were assigned to it. In discussing whether a warrant is general or not, the Court stated at page 503:

> "It is enough if the description is such that the officer with a search warrant can with reasonable effort ascertain and identify the place intended. *Rothlisberger v. United States,* 289 Fed. 72; *United States v. Borkowski,* 268 Fed. 408, 411 ..."

Certainly, under the circumstances of the present case, the executing officers could not "with reasonable effort

ascertain and identify the place intended." As the facts demonstrate, the officers very definitely did not ascertain the place to be searched, much to the dismay of the innocent residents of 831 Whitelock Street. As a matter of fact, the police officer's conduct in breaking into all the rooms of the residence, two of which were entered after the discovery of the petitioner, clearly points out that, as a result of the lack of specificity of the warrant, the officers could not have acted reasonably in their execution of the warrant. The rationale for requiring particularity, and the harm which is sought to be avoided, can not be more vividly demonstrated than by the occurrences in the instant case.

It has been held by federal appellate courts that the requirement of describing the particular place to be searched may be satisfied by stating the address of the building and naming the person whose apartment is to be searched, provided only that that person's apartment is searched and no one elses. *Kenney v. United States,* 81 U.S. App. D.C. 259, 157 F.2d 442 (1946); *Shore v. United States,* 60 App. D.C. 137, 49 F.2d 519 (1931); *Moore v. United States,* 461 F.2d 1236 (1972).

The violation of both the spirit and the letter of these rulings is self-evident when viewed with an eye towards the facts of the case at bar and, therefore, for the sake of brevity the petitioner merely reminds the Court that no apartment was named in the warrant and four rooms in addition to that of the petitioner was searched.

In a case which had facts very similar to the situation presented by our case, *United States v. Higgins,* 428 F.2d

232 (C.A. 7th Cir. 1970), the Seventh Circuit ruled a search and seizure warrant "fatally defective" because of its general nature and, in so ruling, said at page 234:

> "The instant search warrant commanded the search of 'the premises known as basement apartment building at 4432-38 South Calumet Avenue, Chicago, Illinois.' *It must be evident that the officers could not determine from the warrant which apartment was to be searched and they made that determination by searching all apartments until they discovered the one they were looking for.*" (Emphasis added).

Both the argument of the petitioner and the reasoning of the court in *Higgins* are so similar that the petitioner feels it is sufficient at this point to simply quote the above-mentioned paragraph and allow this Court to draw the one logical conclusion; that the warrant commanding the search of 831 Whitelock Street and the conduct of the officer's in executing that warrant resulted in an unlawful search and seizure, compelling a return of all property seized and the suppression of all fruits of the illegal search in any subsequent prosecutions of the petitioner.

The petitioner finds support for his contention that the law enforcement authorities are under a duty to attempt to determine whether the building to be searched is a single or multiple family dwelling in the recent case of *United States v. Esters*, 336 F. Supp. 214 (E.D. Mich., 1972). There the premises described in the warrant as "4637 Newport in City of Detroit, Michigan" was assumed to be a single family dwelling by federal narcotics agents when in fact it was a two-family residence. The court pointed to the facts that there were two mail boxes, separate door bells and two

utility meter boxes located on the exterior of the structure which placed the agents on notice that more than one residence was located therein. The Court, however, did not rest its decision that the warrant was not particular enough to pass muster under the Fourth Amendment on the basis of these facts alone. It was noted that there were two telephone numbers listed to different individuals at that address and that the telephone company's records so indicated. At page 216 Judge Kennedy stated:

> "None of this information, *which is readily available to law enforcement agencies*, was sought by the federal agents before the request for a search warrant was made, even though there was ample time and opportunity to make such an investigation." (Emphasis added)

At page 219 the Court concluded:

> "Given the facts in the instant case, it can only be said that under the description of the place to be searched contained in the search warrant – 4637 Newport – the executing officers could not possibly have known whether they were to search either or both of the upper and lower living units."

It seems clear that the Court placed great emphasis upon the fact that the authorities could have found out that they were involved with a multi-family residence had they only conducted a cursory investigation in ruling the warrant void.

The petitioner fails to see any meaningful distinction between checking telephone company records and making a telephone call to local real estate officials in order to

attempt to determine whether more than one family resides in a building. Furthermore the petitioner contends that, had the police so desired, they could have obtained from their informant the information that 831 Whitelock Street was not a single family residence and then asked the informant for the exact location of the petitioner's room.

Another federal appellate decision factually similar to the instant case is *United States v. Santore,* 290 F.2d 51 (C.A. 2d Cir., 1960), cert. denied, 365 U.S. 834 (1961), where the search of a residence which had the outward appearance of being a single family structure, while being a multiple family dwelling, was upheld by the Court as being sufficiently particular. The Court placed great emphasis, however, on the fact that no investigation short of an illegal intrusion by the authorities would have revealed the multi-family characteristic of the building. It was said at page 67:

> "... it (the building) had always been registered with the local authorities as a one-family dwelling. ... Consequently no notice of this subdivision was ever given to the local officials.
>
> ... The description in the warrant was in accordance with the outward appearance of the structure, cf. *Carney v. United States,* 6 Cir., 1935, 79 F.2d 821, *and in view of the Concealment by Orlando of the interior alteration made by him it would be absurd to say that the Government was on notice to it."* (Emphasis added)

Again, the petitioner merely directs the Court's attention to the fact that 831 Whitelock Street was registered with the City of Baltimore as a multiple family

dwelling and that, according to the logic of the decision in *Santore,* the Baltimore City Police Department officials were on notice of this fact.

In conclusion, the petitioner cites the case of *United States v. Hinton,* 219 F.2d 324 (C.A. 7th Cir., 1955), where the affadavit in support of an application for a search and seizure warrant for "6423 Champlain Avenue, Chicago, Illinois" failed to identify a particular apartment in which the sales of narcotics were alleged to have been made. The warrant was issued for the "basement and three floors" of the structure. Judge Swaim, speaking for the Court, in declaring the search warrant invalid, discussed some points which are relevant to the petitioner's claims. At pages 325-27 he stated:

> "For purposes of satisfying the Fourth Amendment, searching two or more apartments in the same building is no different than searching two or more completely separate houses. * * * A single warrant may cover several different places or residences in a single building. But probable cause must be shown for searching each residence unless it be shown that, although appearing to be a building of several apartments, the entire building is actually used as a single unit.
>
> * * * Federal Courts have consistently held that the Fourth Amendment's requirement that a specific 'place' be described when applied to dwellings refers to a single living unit (the residence of one person or family). Thus, a warrant which describes an entire building when cause is shown for searching only one apartment is void. *United States v. Barkouskas,* 38 F.2d 837 (M.D. Pa. 1930); *United States v. Diange,* 32 F. Supp. 994 (W.D. Pa., 1940);

United States v. Chin On, 297 F. 531 (D.C. Mass., 1924); *United States v. Innelli,* 286 F.731 (E.D. Pa., 1923); *United States v. Mitchell,* 274 F.128 (N.D. Calif., 1921).

* * * We are merely insisting, as we must, that in issuing search warrants the requirements of the Fourth Amendment be met. If innocent people were actually subjected to an unjust search under the warrant in question here, as might well be the case, it could still be argued that the defendants were not harmed thereby and, thus, should not be able to challenge the warrant because its coverage was too broad. The cases already cited make it clear that this argument has not been accepted by the Courts because they are determined to discourage the practice of issuing warrants without a sufficient showing of cause, when the cause shown does not cover as broad an area as the command of the search."

The petitioner most respectfully asks this Court to grant certiorari so that the conduct of the authorities under the circumstances of the case before this Court will not be left to their good faith interpretations of the State and Federal rulings on this important subject. The petitioner in no way contends that the authorities acted out of malice or bad faith and this fact is irrelevant to the issues presented. The fact that, while acting in good faith, a violation of the constitutional rights of the petitioner and of individuals who had the misfortune to be present at the time of the search occurred, is a clear indication that a great need is present for a resolution of the issues raised by this petition. Without such a resolution, nightmares such as the one presented by the instant case will reoccur to the detriment of all of us.

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that this petition for a Writ of Certiorari be granted.

Respectfully submitted,

GERALD A. KROOP,

Attorney for Petitioner.

APPENDIX A

OPINION OF J. MASON
IN COURT OF SPECIAL APPEALS
(Filed March 1, 1976)

The appellant, James Alphonzo Delly, was convicted at a bench trial in the Criminal Court of Baltimore of the crime of possession of heroin with intent to distribute. He was sentenced to a term of seven years.

The appellant's only assignment of error is that the evidence was obtained as a result of an unreasonable search and seizure carried out under an illegal general warrant.

On August 31, 1974, police officers armed with a search warrant entered the premises of 831 Whitelock Street in Baltimore City. In looking for the appellant, the officers broke into two unoccupied rooms on the second floor of the building prior to breaking into the third room where the appellant and sixty-five bags of heroin were found. After locating the appellant, the officers also broke into two unoccupied rooms on the third floor. Nothing was seized or introduced into evidence against the appellant from these unoccupied rooms. It was established at trial that 831 Whitelock Street was a multiple family dwelling and that the owner had authority to rent four rooms, including the one that was rented to the appellant.

The principal thrust of the appellant's argument is that since the premises were a multiple family dwelling, the search and seizure were illegal "because the warrant did not describe the place to be searched with that particularity, required by the Fourth Amendment". The appellant further argues that before obtaining or executing the warrant, the police had a duty to check with the proper authorities to determine whether the house was a single or multiple family dwelling. To support this novel proposition, the appellant relies solely on the case of

United States v. Santore, 290 F.2d 51 (2d Cir. 1960) *cert. denied*, 365 U.S. 834 (1961). In that case, a warrant was issued authorizing the search of a house which appeared from the outside to be a single family dwelling. In executing the warrant, however, it was discovered that the house contained two or more separate family units. In upholding the validity of the warrant, the Court made the following observations:

> The house at 164 Hill Street is to all outward appearances a one-family house with a front door and a side door, and it had always been registered with the local authorities as a one-family dwelling. A few years prior to the search the interior of the house was renovated and subdivided by Orlando, but, in contravention of local ordinances, no permission to do so was obtained from the proper authorities. Consequently no notice of this subdivision was ever given to the local officials. *Id.*, 67.

Unlike the appellant, we do not read this statement to mean that before a police officer obtains or executes a search warrant for a house which appears to be a single family dwelling, he must first check with local authorities to make sure the premises are not a multiple family dwelling. We know of no authority mandating such an onerous and burdensome requirement, nor are we inclined to impose one.

To satisfy the requirements of the fourth amendment to the Federal Constitution in obtaining and executing a warrant to search a multiple family unit, the case of *United States v. Hinton*, 219 F.2d 324, 325-326 (7th Cir. 1955) enunciates the following rule:

> For the purpose of satisfying the Fourth Amendment searching two or more apartments in the same building is no different than searching two or more completely separate houses. Probable cause must be shown for searching each house or, in this case, each apartment.

An exception to this requirement occurs where the multiple unit character of the premises is not externally apparent and is not known to the officer applying for or executing the warrant. *Owens v. Scafati*, 273 F. Supp. 428 (D. Mass. 1967), *cert. denied*, 391 U.S. 969 (1968); *State v. Chisholm*, 499 P.2d 81 (Wash. 1972); *State v. Koberstein*, 493 P.2d 176 (Ore. 1971); *State v. Aiello*, 221 A.2d 40 (N.J. 1966). Annot., 11 A.L.R. 3d 1330 (1967).

There is no formula which can be used to measure the particularity with which premises must be described in a search warrant. The adequacy of such description in every case necessarily depends on the facts and circumstances there present. *Frey v. State*, 3 Md. App. 38, 46, 237 A.2d 774 780 (1968). Orinarily the description in a warrant of a house to be searched is sufficiently defined if it correctly states the street number of the house. *Saunders v. State*, 199 Md. 568, 572, 87 A.2d 618, 6 (1952); *cf. Ferguson v. State*, 236 Md. 148, 202 A.2d 758 (1964). In the present case, the outward appearance of 831 Whitelock Street gave no indication that the dwelling contained more than one family unit. The building had but one doorbell and one mailbox. There was no evidence that the police knew or should have known that more than one family resided in this dwelling. Accordingly, the evidence seized was not the result of an unreasonable search and seizure under an illegal general warrant.

JUDGMENT AFFIRMED.

APPENDIX B

ORDER
COURT OF APPEALS
(Dated May 25, 1976)

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the said petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

APPENDIX C

SEARCH AND SEIZURE WARRANT
AND AFFIDAVIT IN SUPPORT OF
SAID WARRANT

To: Any Police Officer of Baltimore City:

Affidavit having been made before me by (a) Det. James Butts that he has reason to believe that (on the person of) "Reds Delly", M/N/38-42 Yrs., 5'7"-5'9", 170-175 Lbs. light complected, mustach and glasses, (on the premises known as) 831 Whitelock St., a two story brick row home in the City

of Baltimore, there is now being concealed certain property, namely; (c) Certain Controlled Dangerous Substances, Narcotic Drugs, Related Paraphernalia, Photos, Books, Papers and Contraband and Monies which are in violation of the Laws of Maryland pertaining to Article 27, Section 276-302 of the Annotated Code of Maryland which relate to the Narcotics and Controlled Dangerous Substance Laws of Maryland. and I am satisified that there is probable cause to believe that the property so described is being concealed on the (person) (premises) above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are therefore commanded, with the necessary and proper assistants, to search forthwith the (person) (premises) herein above described for the property specified, executing this warrant and making the search; and if the property be found there, to seize it; and if upon execution of this warrant, there are found persons then and there engaged in the commission of a crime, arrest those so participating; leaving a copy of this warrant with an inventory of the property seized and those so participating; leaving a copy of this warrant with an inventory of the property seized and returning copy of said warrant and inventory, if any, to me within five days after execution of this warrant; or, if not served, to return this warrant to me within five days after its expiration, as required by law.

Dated this (e) _____ day of _____ 19 _____

SIGNED _____
JUDGE

Affidavit in support of a search and seizure warrant for the premises known as 831 Whitelock St. a two story brick row home, and for the person known as "Reds Delly", described as a male, negro 38-42 yrs., 5'7"-5'9", about 170-175 Lbs, light complected with a mustach and wears black horned rim glasses. Your affiant will show that the mentioned person is using the above premises for the illegal storage, concealment, manufacture and distribution of Certain Controlled Dangerous

Substances in violation of Art. 27, Secs. 276-302 of the Annotated Code of Maryland.

Your Affiant, Det. James Butts, has been a member of the Baltimore City Police Department for a period in excess of 10 years. During my tenure with the Department, I have worked in an investigative capacity, investigating violations of the Narcotics Laws for a period in excess of 4 years and have conducted investigations which have led to the arrest of some 500 persons for violations of the Narcotic and Controlled Dangerous Substance Laws. In addition to training received at the Police Academy, I have attended and successfully completed both a three day seminar held in Baltimore and a two week school held in Washington, D.C., both given by the Drug Enforcement Administration, United States Department of Justice.

On a day in the fourth week of August, 1974, Your Affiant, Det. Butts, met with a confidential informant who related that he wished to supply information relative to Heroin trafficking in the City of Baltimore. The informant at that time had not previously supplied information but was extensivly debriefed by Your Affiant and other members of the CID Narcotic Unit for a period in excess of 2 hours. During that time, the informant relayed much information, covering a very broad scope of the trafficking in heroin throughout the City and the informant corroberated much known information about major traffickers in heroin in the City. At no time was his information found to be false or misleading and your affiant believes the (illegible) to be truthful. The informant has been a narcotic user for many (illegible) and is very famaliar with the packaging and distribution metho (illegible) hard narcotics.

The informant related at the meeting that he know of a person (illegible) "Reds Delly", whom he described as a male negro, 38-42 Yrs., 5' (illegible) 5'9", about 170-175 lbs., light complected with a mustach and (illegible) "Reds" sometimes wore black horned rimmed glasses. The informant stated that Reds was dealing large quantities of "Mexican (illegible) (a brownish Heroin, generally originating in Mexico) from (illegible) home at

831 Whitelock St. and that he had seen large quanti(illegible) bundled heroin (packaged for distribution) in the house (illegible) past several days. The informant was asked if he could make purchase from the subject from his home and he stated that (illegible) and would be willing to do so, after the proceedures of a Controlled Purchase were explained to him. Arrangements were made to meet at a later date with the informant to complete the purchase.

Let it be noted that the subject "Reds Delly" is known to your affiant although by that name only, and that he is believed to be a large supplier of heroin and has been doing so for a period of years.

On 30 August, 1974, your Affiant Det. Butts again met with the informant, who will be known as NUI# 291 and arranged to make a Controlled Purchase from "Reds". The informant was taken to a location in the area of the 800 Blk of Whitelock St. and was strip searched, found to be free of drugs and monies and was relieved of personal papers and given $45.00 in departmental funds. NUI#291 then went directly to the front porch of 831 Whitelock St. a two story brick row home and knocked at the door, a subject came out on the porch who was known to your affiant as "Reds Delly" and fitted exactly the description given to your Affiant by NUI#291. The informant handed Reds the money, Reds went into the house and after about 3 minutes, came back to the porch and handed the informant a small object. The informant then directly returned to your Affiant and handed over a packet of 6 glassine bags containing a brownish powder. The contents of a bag were field tested with a Marquis reagent and gave a positive indication for an Opiate (Heroin). The informant was again searched and found to be free of all monies and drugs, his personal papers returned, and he was sent on his way. Let it be noted that at no time during the transaction did the informant talk to or have any dealings with any other person then the suspect Reds. NUI# 291 was then sent on his way.

It is felt that with the extensive debriefing, the truthfulness noted, the controlled purchase and corroberation of location and description of the suspect Reds, that the informant is legally reliable. With that in mind, your affiant believes that with the facts contained herin that probable cause exists for the issuance of a search and seizure warrant for the person and premises mentioned and pray for the issuance of said warrant.

AFFIANT DET. JAMES BUTTS

SWORN TO BEFORE ME AND SUBSCRIBED TO IN MY PRESENCE THIS _____ DAY OF _____, 1974.

JUDGE _____

APPENDIX D

RELEVANT PORTIONS OF THE TRANSCRIPT OF RECORD DETAILING PETITIONER'S ARGUMENTS AT THE SUPPRESSION HEARING AT THE TRIAL LEVEL

(Dated April 15, 1975)

(T. 50) (The Court) All right.

(Mr. Kroop) Your Honor, I think this argument, Your Honor, if it please the Court, I think the Court is very well aware that even back before the United States became a country there was a case called *Entick v. Carrington* from the England Old Common Law.

(The Court) I remember it very well.

(Mr. Kroop) I'm sure. Anyway, that was a prohibition – a very important case – a prohibition against general warrants. There had not been specificity and as a result of that case our forefathers in the Fourth Amendment drew up the Fourth Amendment which specifically describes the person or property to be seized or the place to be searched. So, it must be specific. There can not be general warrants.

(The Court) Right.

(Mr. Kroop) Now, the issues have come up in the recent past because we have multiple dwellings. Clearly, all Courts are in agreement where you have a huge apartment house you cannot go in and search every apartment. I think there is (T. 51) no – you don't find difficulty nor do I with that.

What you brought out in your query to me was, "Mr. Kroop, do you expect the Police to have X-ray eyes, to know what appears to be a single-family dwelling turns out to be a multiple dwelling?"

(The Court) It's still a single-family dwelling that the owner had decided to lease out a few rooms here and there, but it's not a multiple dwelling from this evidence.

(Mr. Kroop) The testimony of Mrs. Merks is that she has a license or she indicated it was listed as multiple-family dwelling, giving her permission to rent it out. Assuming it is still a single dwelling with rooms being rented out, for purposes of arguendo my issue is this: The case law of very recent cases – and a very thorough explanation of this type of situation appeared in *Butler v. State*, 19 Md. App. 601. Now, in that particular case, Your Honor, the form of the warrant was very, very, very similar to the case at bar. It stated as follows:

The search warrant was for 612 Pitcher Street, three-story brick dwelling. It turned out, as the record shows, (T. 52) that upon execution of the warrant – same as I tried to show here –

it developed that the premises 612 Pitcher Street had a first-floor tenant, Vaughn – and in our case Merks – a third-floor tenant, Rudy; with a second-floor rear bedroom rented to the appellant. Almost right on point. The only different in the case at the bar is that we have Merks on the first floor, two other people living on the second floor, appellant in the rear, same as in *Butler,* and on the third floor the same here, another tenant; but the key and the key to the *Butler* case and how the Court got around it, they said this:

"The Police were directed to appellant's room immediately upon entry, and it was that room only that was searched and from which contraband was seized."

They go on and cite *Tucker v. State* in the *Butler* opinion which is a Maryland Court of Appeals decision at 244 Md. 488.

(The Court) I really remember that one very well.

(Mr. Kroop) That's a little more recent. Your Honor. At least it's this country. It says the warrant authorized search of a similarly described property. The contention that (T. 53) it was a general warrant was rejected and here's the reason. There the warrant authorized search of the entire premises as in the warrant at bar, but the affidavit – now, this is important – the affidavit for that warrant demonstrated probable cause as to one room only and the search was limited to that room.

Now, what these cases are telling us – the recent *Butler* case and Court of Appeals from *Butler* cited by the Court of Special Appeals for authority is that when you have these dwellings that turn out to have roomers or boarders which you can't ascertain as you indicated from outside view, therefore they get a warrant for a general location – in this case, Whitelock Street, and in the *Butler* case, Pitcher Street. When they came upon the premises in both those cases, the Police did what they should have done. In the first case, in *Butler,* they asked.

They didn't just indiscriminately arrest and search the first-floor premises, break in the second floor, break in the third floor and, finally, break into the appellant's door. They asked.

He knew him as "Reds" Delly. He said this. "Which is "Reds" Delly's room? He's up on the third floor. Thank you, (T. 54) ma'am." They have no problem. Here, unlike in Butler, they searched the individuals on the first floor. They searched the first floor and then went to the second floor; and by the affiant's own testimony, he broke into the first room he came to and the second room he came to and nobody was there. Finally, he broke into the third room and found Delly on the bed. Even after they find Delly they go upstairs to the fourth or fifth place they've searched on the third floor.

Now, in *Tucker* – and this is important – they described the whole premises, but the affidavit indicates which room and it is only that room that they go to.

If it please the Court, the key to this case and why I think it violates the Fourth Amendment particularly as to the specificity clause of the Fourth Amendment which states specifically to describe the person or property to be seized or "the place to be searched." If you look at the affidavit, Your Honor, most respectfully on Page 1 of the affidavit, if you look at the last paragraph it will read very clearly that the informant, that the informant was on the premises of Mr. Delly and had seen with his own eyes – I'm not quoting verbatim, but he was on the premises.

(T. 55) (The Court) It says from his home at 831 Whitelock Street.

(Mr. Kroop) That is correct.

(The Court) And then in the view of the detectives when the buy was made. The doorbell was rung and it was Mr. Delly, not this lady who owns the house, who came to the door and allegedly sold the heroin.

(Mr. Kroop) I agree, but if you look at the first page – may I see that, Your Honor. Thank you, sir. The affidavit on the first page, Your Honor, the last paragraph, and this is what I think is important in line with the *Tucker* and *Butler* cases. It states that he, meaning the informant, had seen large quantities of bundled heroin packaged for distribution in the house within the past several days. Now, if it please the Court, what I think the significance of that is, Your Honor, is that there is a Federal case which is cited by the *Butler* opinion which is cited with approval which explains, I think, the question that you queried about should Police have X-ray eyes, and that case is *United States v. Esters*, E-S-T-E-R-S, 336 F. Supp. 214. Now that case held, if it please the Court, that the agents knew or should have known, the Federal agents (T. 56) knew or should have known that it was more than a one-family dwelling. Now, if the affiant – and we'll have to assume Detective Butts is absolutely being truthful when he goes to the Judge below to get the warrant – if he's told by his informant that the informant has been in the house, had actually seen the contraband, then the simple answer to that would be, Your Honor, that it would have to be in that room. That's the only logical inference to draw. The Police should have known by making an inquiry as to where in the house did you see it. The simple answer would have been, if the affidavit were correct, the rear bedroom or the second floor rear where Delly lives, if that is the case, I think the inferences have to be that is the case because, if you recall, the affiant himself said every other door was locked. He had to break in every door. One was empty. The other man wasn't there. Finally they found Delly, and even on the third floor they were all locked.

The only logical place for the narcotics to have been on the premises would have had to be in Mr. Delly's room, if it is a fact, and let's assume for the sake of argument it is a fact, the Police should have known and it is encumbent upon Police authority to go out of their way to find out because again (T. 57) we don't want things that happened in this case to occur. We do want persons dealing in drugs to be apprehended. We

want them convicted. That's right, Your Honor. I'm a defense attorney, but I'm also a citizen of the country and I have children, and I have the same reason as you for wanting justice and things to be done correctly as anybody.

(The Court) I understand.

(Mr. Kroop) I mean it with all my heart, but we want it done properly – not the Merks and the Johnsons to be held at gun point, to be searched, to be put through this horrendous activity if the Police can avoid it. If they can't avoid it, that's the price of society.

(The Court) Isn't it true Detective Butts told Mrs. Merks he was not looking for her?

(Mr. Kroop) That's right and he should have left her alone. He should have asked the same as they did in *Butler*. "Miss Merks, we're not looking for you. Where's "Reds" Delly?" "Mr. Delly is in the third floor rear." "Thank you, ma'am."

(The Court) That would have been wrong. It was the second floor rear.

(Mr. Kroop) I mean second floor. Thank you.

(T. 58) (The Court) Maybe that's what he was worried about – he'd get to the wrong room.

(Mr. Kroop) If he can ascertain – we're not going to put an impossible burden on the Courts. We encourage them to get warrants, but *Butler* says – if you recall, the Police were directed to appellant's room immediately. They had enough sense to ask, "Where does Butler live?" "Right up there." That was the only room they went to, the only place, even though it was an all-encompassing warrant. Of course, that's good, and there's another case which I think again supports our position, Your Honor, and let me just cite that case to you and give you an example of that.

(The Court) You not only ruined my lunch hour and my afternoon –

(Mr. Kroop) Not really. This is *Harris and Schmidt v. State*. No relation, I'm sure.

(The Court) God forbid.

(Mr. Kroop) In any event, I can point that out – 17 Md. App. at Page 491, Your Honor. The actual page of the cite is 484, but at 491 it points out this. This case is another interesting case. This describes a rural house that does not (T. 59) have a street number and it goes into a large description of the house but it puts it on – I think the affidavit puts the house on the left side of the street when in fact the house is on the right side. Is the Court following me? Everything else is perfect except it's the wrong side of the street. There was testimony at a hearing similar to what we had – real estate agents, Police officers, sheriffs, neighbors. Some said they could have found the house on that description and some couldn't, but the question was very simply – and it's the same as I bring out in this case – no matter what the situation, no matter – even though it was described as being on the wrong side of the street, the Court says – and I quote – "Nevertheless the arresting officers were abie to proceed directly to the house without stopping to inquire as to its location" – meaning they knew where they were going, meaning they didn't break down other people's doors, didn't try up one side of the street and down the other side of the street. They went directly to the house they meant to go to, even though they put it on the wrong side of the street. *Butler* went directly to Butler's room, even though the warrant was for the whole house because they asked. Finally, in *Tucker* they knew and went right to the (T. 60) same room.

The distinguihing factor in our case, unlike any case that's ever been handed down in Maryland, is that they didn't know where they were going except to Whitelock Street, and they

went through every room and finlly came to the appellant's room, when all they had to do was ask Mrs. Merks or prior to going there ask the informant, "Where'd you see the heroin in the house." I've seen it many times like that, and you have seen many warrants that state without question second floor rear bedroom. I've seen it and I'm sure you have, too, and there's no question that the State has. That's what we mean by specificity. This was the whole purpose of the Fourth Amendment, the whole purpose based on *Entick v. Carrington*. That was the general warrant and our forefathers said they have to be specific and they even used the words "with reasonable specificity," in other words specifically describe the property to be searched or the place to be searched or the person to be seized or the property to be seized.

Now, they used that term in the Fourth Amendment and, as I indicated to you, in all the cases that have come up recently there's a unanimity of opinion when it's a public (T. 61) dwelling, and clearly with a multiple dwelling there's no problem. They have to name which apartment or which floor because they know or should have known. Like you indicated, they don't need X-ray eyes.

Now, the Court feels that when you have a single-dwelling home which to anyone's appearance – for the record we're going to admit that this was ostensibly a single dwelling, but they could have found out by this informant who was allegedly on the premises or they could have asked Mrs. Merks. They could see there were several different rooms and that's where they failed and that's why the warrant is a general warrant and that's precisely why the Fourth Amendment was written, to avoid and stop prohibitive searches of an area of a home. I've exhausted my argument. Hopefully, I have given the full scope of the cases. I honestly believe under the facts at bar the warrant itself is indeed a general warrant and the evidence should be suppressed for those grounds, Your Honor.

(The Court) Thank you, Mr. Kroop. I really think that it would be impossible for me to check the authorities cited by

Mr. Kroop and still be ready to make a decision on the matters raised on the motion at any time in the early afternoon.

* * * * * * * *

(April 16, 1975)

(T. 74) (Mr. Kroop) I just wanted to – again, without belaboring the entire argument – to reiterate the proposition the Defense is presenting. As I indicated to the Court, there is specifically within the Fourth Amendment a prohibition against general warrants. In fact, the reason I cited the old case of *Entick v. Carrington* from England – that was a classic indication of a general warrant and that's exactly why the Fourth Amendment was written. Everything else evolving from the Fourth Amendment is the making by the Supreme Court and our case law here. You have to remember the Fourth Amendment was designed specifically to prohibit general warrants.

Now, a general warrant obviously –

(The Court) And also unreasonable searches and seizures.

(Mr. Kroop) That's correct, which is a general warrant, but I mean the basic reason that caused our forefathers to bring in the Fourth Amendment was the general warrant aspect. They can't go around and search anybody at any time they want.

Now, there is obviously in the Fourth Amendment a specificity clause because it says at the end of the Fourth (T. 75) Amendment specifically describe the person or property to be seized or the place to be searched. It uses the words "specifically describe."

Now, in recent years, as I indicated before, there's been a problem with multiple dwellings. They never had them in those days, but now they have obviously multiple dwellings

in every city, whether it be large or small. Now, the issue has come up before the Appellate Courts before in many, many instances; and I'm willing to concede that if the Police officers had no way of determining that the area in which they were trying to get to was a multiple dwelling, then they can do no more than merely get a warrant for a specific address and go in and search that address. However, in the case at bar in the affidavit itself on Page 1 according to the affiant, Detective Butts, his informant told him that he was in the home of this man named "Reds" Delly and that he has seen the heroin within the past several days. The simple question that could have been and should have been made at that time by the officer to his informant was where in the house did you see it. I think it's important because, as I pointed out to you, I have warrants, Your Honor, where there's a rooming house that have stated front (T. 76) bedroom, rear bedroom, basement, third floor because they try to be specific. In an area where it can be located they try to pinpoint it, they try to satisfy the specificity clause of the Fourth Amendment. Here, the officer admittedly doesn't recall if he did it; and if he did, obviously he doesn't remember and he didn't put it in the affidavit and in the search warrant itself. So, I think the Police should have known and could have known just be being a little more diligent. This is what the Fourth Amendment really is all about when it comes to the Courts. The Courts create an exclusionary rule. The Supreme Court in *Mapp v. Ohio* tells us clearly we cannot stop Police from intruding and causing unreasonable searches, but we can deter them by making these efforts which everyone wants them to continue doing, but we want them to do it properly, and the way to stop them is to exclude the evidence at the trial and that's what *Mapp v. Ohio* sets up – the exclusionary rule. I think this is what we're trying to do in this case. We're not trying to let a man who ostensibly may be guilty or not guilty, depending on the trial of the case itself get away scot free but we're trying to protect every decent citizen in this state and in the United States from unreasonable searches and seizures (T. 77) and from these types of instrusions.

As a classic example this case points out – in this case we had Mrs. Merks herself and her gentleman companion, Mr. Johnson, both held, searched and caused great indignity in their own home for doing nothing more than living in the same building. We have the people not at home having their doors broken down. This is what we're trying to stop if we can. We have to use a balancing approach as to what is right and not right. In this case, as I pointed out, there was a recent case – *Butler v. State*, 19 Md. App. 601 – where it points out that – very similar to this as the Court is aware – 612 Pitcher Street, a three-story brick dwelling. In this case we have the Whitelock Street, a two-story brick dwelling, and the difference was in that case the Police were directed to appellant's room.

Now, according to the opinion of whatever "directed" meant, it seems like the Court had pointed out they were directed there because there was a bad lock on the door. In any event it caused them to go to that particular room and it was only that room that was searched. In the case at bar by your own question of Mrs. Merks all they had to do was ask her which one (T. 78) was Mr. Delly's room or where was Mr. Delly and she would have said, "The second floor rear bedroom." They could have gone there and executed the warrant. The truth of the matter is they didn't know where they were going and indiscriminately broke down doors and held people at bay, at gun point.

In *Tucker v. State*, a Court of Appeals decision, the warrant authorized the entire premises to be searched, but the affidavit indicated that it was to one room and it was only that one that was searched. Again, the Police in *Tucker* could have easily discovered the circumstances and they did, and that is why they only went to the one room; and as I pointed out to you, in the *Esters* case, which is 336 F. Supp. 214, that particular case points out to us – and I think it's important you know this – in the *Esters* case it was pretty clear it was a multiple dwelling by looking at it. There were two separate and easily visible doors, two mailboxes. There was a speaking

tube which is usually used and commonly used in multiple dwellings where you have people with two different telephones or two phones on the premises. There were two electric-unit meters attached to the side of the building. So, it was clear from the *Esters* case, most respectfully, that the Police just (T. 79) by looking at the building could see or should suspect it was a multiple dwelling, but the *Esters* case holds and our Court cites it with approval if the Police knew or should have known; and the key to this is I think that the Police did not know but they could have known and should have known there was only one room they were looking for.

For instance, Mrs. Merks testified she had a permit for multiple listing. All they had to do was check on the permits of the Real Estate Board which they didn't do and they would have found there are several distinct rooms. All they would have had to do is ask Mrs. Merks. They had enough sense to say they weren't looking for her. All they had to do is say, "Mrs. Merks, where's Mr. Delly's room?" "Right up here, sir," and there certainly wouldn't be a leg to stand on by the Defense.

(The Court) You think there's any obligation on Mrs. Merks at that time to say after they said, "We're looking for 'Reds'," for her to say where "Reds" room was?

(Mr. Kroop) She said they had already gone up the stairs. Now, I think the logical inference – let's look at the situation. It's 1:00 in the morning. A decent citizen in (T. 80) her sixties who's probably never seen a police officer except to call him over and say, "How are you," a decent woman. She should strike you in no other way. The house is broken into. Can you imagine the shock that even you or I – God forbid – would go through if at 1:00 in the morning the Police broke into our house? Before she could say anything they went up the steps. I don't think it was encumbent upon her, no. I think if she'd been calm and reflective, and I think it's easy in a courtroom to be calm, but I think it was their duty to say, "Mrs. Merks, we're not looking for you. Where's 'Red's' room?" She would have

said, "Upstairs." They could have gone in and that would have been that. The obligation is put there by the Fourth Amendment, and I think the Courts should not be asked by the State to stretch the obligation or to stretch the rights of Police because that's the whole purpose of the Fourth Amendment, to protect the citizens from Police intrusion.

If I may add one other thing, Your Honor – it appears obviously in the case itself and in the four corners of the warrant that the informant does not – I think it's important I mention this – *Spinelli* and *Aguilar*. If you recall, the informant – and the affiant admits the informant (T. 81) had never given him information before which led to any arrest or convictions. He had been debriefed and apparently familiar with heroin and the people that use it and so on. There was however a controlled buy and under *Nutt* – I'm going to be very candid. Under *Nutt* Judge Moylan indicates that if the controls are adequate that in and of itself is sufficient probable cause, and in this case the affiant says he actually saw the informant being handed some objects and handing the money over at the door on the first floor.

So, in light of that I would leave it at that point, but I do want to bring it up that I'm not abandoning that issue, although I'm not pressing it; but I think, Your Honor, that I hopefully have showed the Court sufficient evidence that the Police did not do what they were supposed to do under the law, that the warrant was too general in light of the fact that they could have ascertained more specifically where the room was. They did it in *Tucker*. They didn't do it in *Butler*, but they went directly in *Butler* to the one room. I know of no case which allows the Police just to indiscriminately walk in and break down every door they find. For instance, why, Your Honor, if it please the Court, when they broke down the (T. 82) first door on the second floor and realized it was a separate room that was locked, why right then and there should they not have stopped and said to Mrs. Merks, "Mrs. Merks, which one is Mr. Delly. We don't want to break down anybody else's door."

(The Court) Well, that was asked of Detective Butts and said that they felt they didn't have time to observe the polite repartee you've mentioned. It was a question with them of having the evidence disposed of if there's any delay. So, they went to every room they could.

(Mr. Kroop) But that again, Your Honor, is the balancing approach. I understand that and their motive, I'm sure, was not malignant; but many times Police will make what they think is a valid arrest and the Court's will strike it down, not in criticism of the Police but protection of the public. That's what it's all about anyway. That's why you're here and I'm here and the State is here to protect the public. You've got to balance it. On the one hand we don't want crimes committed and on the other hand we want citizens to be able to sleep at night without the threat of being awakened by Police officers without authority.

Thank you, Your Honor.

APPENDIX E

RELEVANT PORTIONS OF THE TRANSCRIPT OF RECORD SHOWING THE TRIAL COURT JUDGE'S RULING DENYING THE PETITIONER'S MOTION TO SUPPRESS AND EXCLUDE EVIDENCE

(T. 89) The more important question, of course, goes to the allegation that this is a general warrant and that the officer in executing it violated the Fourth Amendment to the United States Constitution not only because it was a general warrant but by their actions in executing it which amounted, according to the Defense, to an unreasonable search and seizure which is prohibited by the Fourth Amendment.

First off, I think that we have to remember that the appearance of a house, according to the evidence which I've heard and according to the information in the affidavit but mainly according to the evidence and the viewing of the premises by the officer before he got the warrant, indicated that it was a single-family dwelling. Secondly, when the informant allegedly purchased heroin from the Defendant at the (T. 90) address, the affidavit shows the informant went to the door in the view of the observing officer, rang the bell, that the door was answered not by Mrs. Merks, the owner and who says she lives on the first floor, but by Mr. Delly. A conversation took place and Mr. Delly left for several minutes and returned, handing a package or a packet to the informant in return for money. I think that those two facts are clear from the evidence – the appearance of the house and the fact that the Defendant answered the doorbell and nobody else answered the doorbell, but that a buy was allegedly made by the informant at that time.

Now, Mr. Kroop raises the point that the Police could easily have checked with the Real Estate Bureau or Commission to ascertain it was not as it appeared to be a single-family dwelling but a multiple dwelling. I'm not aware of any obligation on the Police to make such a check on every property to ascertain if it is a multiple-family dwelling if it outwardly gives the appearance of being a single-family dwelling. If there were evidence that it was a multiple-family dwelling, visual evidence on the outside, then such an obligation may have arisen; but all of the evidence in the case thus far on the motion points to the fact that outwardly it was a single-family (T. 91) dwelling and there was no outward visible evidence to the contrary.

In the *Butler* case, of course, the search and seizure was upheld there and one of the reasons for upholding it in the opinion written by Judge Menchine was that although the warrant authorized a search of 612 Pitcher Street, three-story brick dwelling, without designating a floor or room, the opinion states that the Police were directed to appellant's room

immediately upon entry and it was that room only that was searched and from which contraband was seized.

As I have already advised counsel, by remarkable coincidence the *Butler* transcript was in my chambers yesterday because I have pending a petition by *Butler* for relief by post conviction and was somewhat familiar with the situation. Now, the testimony of the officer who executed the warrant in that case – I refer now to Page 66 of the transcript. I think Officer Schlein was questioned, "Can you tell me what happened after you entered the building, please?" This is the testimony of the officer who executed the warrant. "Well, a search was mainly pointed toward a rear room which had a lock and hasp on it. The lock was locked. We had to force the lock (T. 92) off to gain entrance to the room. The rest of the house was gone over, just a preliminary search or basic search slightly. The main interest was in this room."

So, it seems obvious to me that the statements made in the opinion of the *Butler* case that the officers were directed to the Defendant's room in that case means actually that they were directed by the fact that there was a very hasty or innocuous search or a look at the other rooms but that their attention was directed not by any person but by the fact that the room was locked with a lock and hasp.

(Mr. Kroop) Your Honor, may I interrupt one moment. I want to object to the Court referring to the transcript of the Butler case itself.

(The Court) Yes. I understand. Well, it just happened that the transcript was here, and you made quite an argument on the fact that Judge Menchine said that the attention of the Police was directed to the rear room and I wanted to find out how it was directed.

(Mr. Kroop) I was just repeating what the Judge said in the opinion.

(The Court) And I don't blame you a bit for (T. 93) it, but it shows that the statement upon which you relied is open to several interpretations.

(Mr. Kroop) Yes, sir.

(The Court) On Page 74 of the transcript the question was "Officer Schlein, just before you entered the second floor rear room at 612 Pitcher Street can you tell us what directed your attention to that particular room in that house?" There was an objection which was overruled. The officer then testified, "The room was set off by a lock and hasp on the door. Entrance could not be gained because we didn't have a key. Persons on the premises didn't have a key because it was allegedly rented out. We had to tear the lock off to gain entrance to the room."

Well, that's a clarification of the statement which was made in the *Butler* appeals opinion and which I think is applicable because I would assume Judge Menchine had access to the transcript when he wrote the opinion. Now, there's also the *Buckner* case, 11 Md. App. 55, which passed upon the same point. In the *Tucker* case which has been mentioned in evidence, the affidavit there mentioned only one room and for that reason the officers immediately went to that room and (T. 94) searched only that room, although the warrant technically covered the entire house. In this case the warrant – the affidavit does not mention only one room and the officer didn't have the benefit apparently of any prior knowledge that the narcotics were in one room and one particular room only. The *Esters* case, as commented upon by Judge Menchine in the *Butler* case on Pages 606 and 607 – Judge Menchine found that the *Esters* case was not applicable to the facts of the *Butler* case.

I find after a rather extended reserach into these cases and into the question which has been raised that the warrant is not a general warrant because it referred to the entire premises, and we come now to the actions of the officer in executing the warrant. Was this a violation of the Fourth Amendment which guarantees that the citizens shall be protected in their dwellings

or residences against unreasonable searches and seizures? Was the manner of executing it unreasonable?

It's something of a twilight area, looking at it from hindsight instead of foresight. I think it would have been preferable, too, if the officer immediately seeing Mrs. Merks said, "Which room – or where does 'Reds' reside?" (T. 95) I don't know what her answer would have been. I hope that it would have been, "The second floor rear," but unfortunately that was not done. According to the witness, Officer Butts, the strategy or tactics were to spread out and cover all rooms as quickly as possible so that evidence would not be disposed of or while the search was taking place. I can't rule as a matter of law that that was undue force or undue violence to the point of being unreasonable. There was evidence that Mr. Delly or "Reds", as he is called, was selling heroin from this house, and the officers' primary duty was to locate it as quickly as possible without doing violence to the prohibitions of the Fourth Amendment. It would have been better if they had checked first.

On the other hand, if they had checked first, something might have happened to the evidence. I can say that it would have happened to the evidence. I can say that it would have been better for the officer to have exercised more caution, but that's hindsight instead of foresight. What they did, I think, was just fine under all the circumstances in that it was not an unreasonable search and seizure that was in violation of the Fourth Amendment.

I have tried to cover all points but for (T. 96) the reasons which I have outlined I will at this time deny the motion of the Defense to have the evidence suppressed for the reasons which I have already outlined at some length.